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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/813,452
Filing Date: March 30, 2004
Appellant(s): LAMSFUSS, MICHAEL

James E. Cole
Middleton Reutlinger
2500 Brown & Williamson Tower
Louisville, Kentucky 40202
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/2/09 appealing from the Office action mailed 1/24/08.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,705,372	Sano et al.	3-2004
5,905,566	Comulada et al.	5-1999
5,458,330	Baum	10-1995

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 35-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sano et al. (USPN 6,705,372).

Sano et al. discloses a tube guide (figure 7) having two guide claws (42 i.e. jaws) which have an angled side and a guide body (41) with a placement groove (41a i.e. base plate). In addition the tube guide has springs (43). The tube guide is adjustable by means of the springs to accommodate tubes of differing diameters. Figure 10 shows the plunger (104) and the jaws (101), which detect the height of the plunger with a tube holding sensor. Figure 11 shows a holding groove, which is provided between the guide clamps (101) and is continuous and flush and is formed in the fixed clamp body.

Sano et al. does not teach a base plate which is movable with respect to the base. It is the examiner's position that it would have been obvious to one of ordinary skill in the art at the time of the invention to make the base adjustable/movable because it would yield greater mobility to the clamping system and greater flexibility for the holding of a workpiece.

Claims 1-13 & 25-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sano et al. as stated in the above paragraph and further in view of Comulada et al. (USPN 5,905,566).

Sano et al. does not specifically teach the use of laser machining.

Comulada et al. discloses the laser ablation of a substrate, which uses a chuck with a leveling device.

It would have been obvious to one of ordinary skill in the art at the time of the invention to use laser machining as taught by Comulada et al. on the article in the Sano et al. guide tube clamp device because it is merely a type of fabrication.

Intended use has been continuously held not to be germane to determining the patentability of the apparatus. In re Finsterwalder 168 USPQ 530, In re Casey 152 USPQ 235, Ex parte Masham 2 USPQ 2d 1647, Ex parte Thibault 164 USPQ 666.

Claims 1-13 & 25-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sano et al. as stated in the above paragraph and further in view of Comulada et al. and Baum (USPN 5,458,330).

Sano et al. does not specifically teach the use of laser machining.

Comulada et al. discloses the laser ablation of a substrate, which uses a chuck with a leveling device.

It would have been obvious to one of ordinary skill in the art at the time of the invention to use laser machining as taught by Comulada et al. on the article in the Sano et al. guide tube clamp device because it is merely a type of fabrication.

Baum discloses the use of laser cutting in the formation of a baseball with a logo.

It would have been obvious to one of ordinary skill in the art at the time of the invention to use laser cutting on the baseball bat, at taught by Baum on the Sano et al. and Comulada et al. article because it is merely a work application of the leveled tube guide device.

(10) Response to Argument

A. § 103 Rejection of claims 35-36 over Sano

Appellant argues that Sano fails to teach a camming surface engaging the pair of slidable jaws and a base plate. The examiner respectfully notes that according to appellant's specification the base plate has a camming surface. Thus the camming surface is one and the same as the base plate.

Appellant argues that Sano fails to teach a movable base plate. The examiner respectfully notes that the rejection states that the moveable base plate is not taught, however, it is the position of the examiner that it would have been obvious to one of ordinary skill in the art at the time of the invention to make the base adjustable/movable

(i.e. add a sliding plate) because it would yield greater mobility to the clamping system and greater flexibility for the holding of the workpiece. Making elements adjustable was held to have been obvious. In re Stevens 101 USPQ 284. Furthermore, the tube guide (40) has movable jaws (claws 42) which slide along the base (41a), thus the base does have relative motion, however it by itself is not movable.

Appellant argues that the inter-relationship between the movable base plate, pair of jaws, camming surface and fixture base is not taught by Sano. The examiner respectfully disagrees because the movable base plate has a camming surface according to appellant's specification. Furthermore, Sano et al. discloses:

FIG. 7

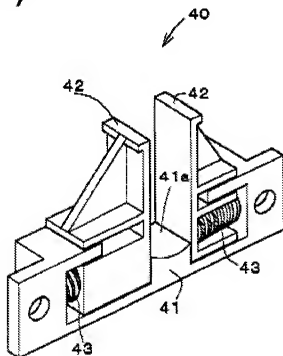


Figure 7: (Sano et al.) Tube guide of tube connecting apparatus (40)

Opposing jaws (42) with angled sides

Guide body (41)

Placement groove (41a)

Springs (43) move jaws (42) to meet tube workpiece

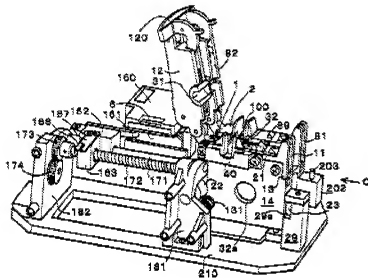


Figure 1: (Sano et al.) internal structure of the tube connection apparatus.

Tube guide (40) is fixed to base (210) (i.e. fixture base)

Sano et al. does not teach a movable base plate, however, it is the position of the examiner that it would have been obvious to one of ordinary skill in the art at the time of the invention to make the base adjustable/movable (i.e. add a sliding plate) because it would yield greater mobility to the clamping system and greater flexibility for the holding of the workpiece. Making elements adjustable was held to have been obvious. In re Stevens 101 USPQ 284. Furthermore, the tube guide (40) has movable jaws (claws 42)

which slide along the base (41a), thus the base does have relative motion, however it by itself is not movable.

Appellant argues that Sano fails to provide a base plate camming surface extending from the opposed jaws (42) and engaging base plate (41a), since the horizontal arms extending from the jaws (42) away from the base plate (41a) and therefore do not engage the alleged base plate (41a). The examiner respectfully notes that the jaws slide along the base plate area with its "camming surface" and thus do engage the base plate. The jaws engage the base plate, in that the jaws slide along the base plate in order to hold the tube workpiece, securely. Furthermore, the camming surface (movable) is not specifically taught by Sano et al. It is the position of the examiner that it would have been obvious to one of ordinary skill in the art at the time of the invention to make the base adjustable/movable (i.e. add a sliding plate) because it would yield greater mobility to the clamping system and greater flexibility for the holding of the workpiece. Making elements adjustable was held to have been obvious. In re Stevens 101 USPQ 284. Furthermore, the tube guide (40) has movable jaws (claws 42) which slide along the base (41a), thus the base does have relative motion, however, it by itself is not movable.

Appellant argues that Sano et al. teaches away from the claimed invention because Sano teaches a "fixed clamp" (11) which is contrary to the proposed movement by the examiner. The fixed clamp body (13) is configured with the fixed

clamp (11). The tube guide (40) is shown in figure 7 of Sano having bolt holes at lateral ends of the body (41) which fix the tube guide (40) in a specific position. The examiner respectfully notes that there is a difference of perspective, because appellant is focused on the larger clamp apparatus (figure 1) while the examiner has focused on the specific part which holds the workpiece (figure 7). The movable workpiece (tube) holder (40) is fixed to a base (210) and an outer frame (11). The **tube guide (40) has movable jaws (claws 42) which slide along the base (41a), thus the base does have relative motion,** however it by itself is not movable. It is the position of the examiner that it would have been obvious to one of ordinary skill in the art at the time of the invention to make the base adjustable/movable (i.e. add a sliding plate; a camming surface) because it would yield greater mobility to the clamping system and greater flexibility for the holding of the workpiece. Making elements adjustable was held to have been obvious. In re Stevens 101 USPQ 284.

The examiner notes:

The fixed clamp 11 movably supported with the slide tube 22 and the guide roller 23 is always urged to the second tube holder 2 side by a spring 131 arranged between the fixed clamp 11 and a supporting wall 181 fixed onto the base 210 as shown in FIG. 1.

A tube guide 40 (see FIG. 1) for accurately setting the tubes is fixed to the body cover 14 of the fixed clamp 11. FIG. 7 is a perspective view of the tube guide 40 showing the side which is in contact with the body cover 14.

The tube guide 40 is constructed of a guide body 41, a pair of guide claws 42,42, and springs 43,43 disposed respectively outside of the claws 42,42 so as to urge them inwards (toward each other). (col. 7, lines 31-36 & 40-48)

Appellant argues that it is not obvious to make the base plate (41a) moveable. The examiner respectfully notes that the jaws (42) move and thus the base plate (41a) is moved in a relative sense. Furthermore, a slidable base plate would yield a moveable base plate. It is the position of the examiner that it would have been obvious to one of ordinary skill in the art at the time of the invention to make the base adjustable/movable (i.e. add a sliding plate) because it would yield greater mobility to the clamping system and greater flexibility for the holding of the workpiece. Making elements adjustable was held to have been obvious. In re Stevens 101 USPQ 284.

Appellant argues that moving the arm (12) over the tube (baseball bat) would inhibit laser engraving. The examiner respectfully notes that laser engraving is not a claim limitation for claims 35-36. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., laser engraving) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was

within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

B. § 103 Rejection of claim 1-13 and 25-26 over Sano in view of Comulada

With regard to **Claim 1**:

Appellant argues that Sano et al. does not teach a movable base plate. The examiner respectfully notes that the base plate is movable relative to the motion of the jaws (42). Furthermore, it is the position of the examiner that it would have been obvious to one of ordinary skill in the art at the time of the invention to make the base adjustable/movable (i.e. add a sliding plate) because it would yield greater mobility to the clamping system and greater flexibility for the holding of the workpiece. Making elements adjustable was held to have been obvious. In re Stevens 101 USPQ 284.

Appellant argues that Comulada et al. fails to teach leveling because appellant's leveling is directed to position or elevation. The examiner respectfully notes that leveling is defined as: to make (a line or surface) horizontal; to make flat or level: to bring a horizontal aiming position: to bring to a common level or plane: to make even or uniform: to attain or come to a level (Webster's dictionary). Comulada et al. teaches that the chuck holds the workpiece top surface level, such that the laser beam is at a

constant focus position (elevation) during ablation (engraving). Thus Comulada et al. meets appellant's claim limitations.

Appellant argues that Comulada et al. teaches a leveling device that renders the substrate flat and thus does not meet appellant's leveling. The examiner respectfully notes that Comulada et al. teaches leveling and hence meets appellant's claim limitations. Furthermore,

...a top surface reference chuck for holding microelectronic substrates or other electronic component substrates during laser ablation or other lithography exposure or ablation steps of the substrate manufacturing process which lithography or ablation steps use leveling devices to provide a level substrate surface for exposure or ablation... (col. 2, lines 64-67 & col. 3, lines 1-3)

This means that the substrate top surface must be held level for uniform ablation, meaning that the laser focal distance (elevation) must remain the same. Consequently, Comulada et al. meets appellant's claims.

Appellant argue that Comulada et al. fails to teach a slidable base plate. This is suggested by Sano et al. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

With regard to **Claim 25**:

Appellant argues that Sano et al. fails to meet the limitations of claim 25, in that "an inwardly directed base plate camming surface" is not taught. The examiner respectfully disagrees because the jaws (42 claws) are biased by the presence of the springs (43) to move towards the base plate (41a). Sano et al. discloses:

The tube guide 40 is constructed of a guide body 41, a pair of guide claws 42,42, and springs 43,43 disposed respectively outside of the claws 42,42 so as to urge them inwards (toward each other). (col. 7, lines 31-36 & 40-48)

Appellant argues that Sano et al. fails to teach the "bat". The examiner respectfully notes that Sano et al. is directed to a tube, which is a functional equivalent of a bat. Furthermore, intended use has been continuously held not to be germane to determining the patentability of the apparatus, In re Finsterwalder, 168 USPQ 530. the manner or method in which a machine is to be utilized is not germane to the issue of patentability of the machine itself, In re Casey, 152 USPQ 235. A recitation with respect to the manner in which a claimed apparatus from a prior art apparatus satisfying the claimed structural limitations, Ex parte Masham, 2 USPQ 2d 1647.

With regard to **Claim 32**:

Appellant argues that Sano et al. fails to teach or suggest: "at least one base plate moving relative to movement of said at least one jaw by an angled camming surface operably engaging said base plate and said at least one jaw". The examiner respectfully disagrees because Sano et al. discloses:

FIG. 7

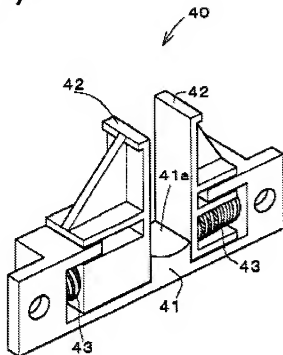


Figure 7: (Sano et al.) Tube guide of tube connecting apparatus (40)

Opposing jaws (42) with angled sides

Guide body (41)

Placement groove (41a)

Springs (43) move jaws (42) to meet tube workpiece

Appellant argues that Sano et al. does not teach a movable base plate. The examiner respectfully notes that the base plate is movable relative to the motion of the jaws (42). Furthermore, it is the position of the examiner that it would have been obvious to one of ordinary skill in the art at the time of the invention to make the base adjustable/movable (i.e. add a sliding plate) because it would yield greater mobility to

the clamping system and greater flexibility for the holding of the workpiece. Making elements adjustable was held to have been obvious. In re Stevens 101 USPQ 284.

Appellant argues that Sano et al. fails to teach the “bat”. The examiner respectfully notes that Sano et al. is directed to a tube, which is a functional equivalent of a bat. Furthermore, intended use has been continuously held not to be germane to determining the patentability of the apparatus, In re Finsterwalder, 168 USPQ 530. the manner or method in which a machine is to be utilized is not germane to the issue of patentability of the machine itself, In re Casey, 152 USPQ 235. A recitation with respect to the manner in which a claimed apparatus from a prior art apparatus satisfying the claimed structural limitations, Ex parte Masham, 2 USPQ 2d 1647.

Appellant argues that Sano et al. fails to meet the limitation “wherein said fixture retains bats of varying diameter at equal elevations regardless of the bat diameter”. The examiner respectfully disagrees because Sano et al. discloses:

... a user sets two tubes 7, 8 (see FIG. 2) one over the other in the tube guides 40, 100. At this time, the tubes 7, 8 are placed with their central axes being parallel one over the other. This is because the distance between the guide claws 42, 42 of the tube guide 40 (see FIG. 7) and that between the guide claws 101, 101 of the tube guide 100 (see FIG. 11) are adjusted to the outer diameter of the tube 7 (8). (col. 14, lines 40-46)

Figures 17 a & b showing differing tubular diameters. (Sano et al.)

FIG. 17A

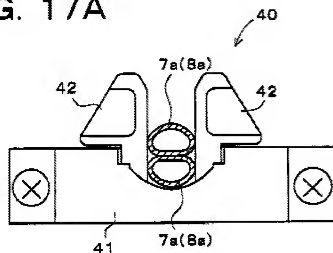
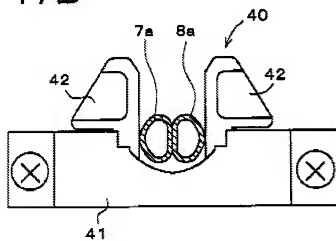


FIG. 17B



Thus Sano et al. discloses that the tube guide (40) accommodates varying tube diameters.

Appellant argues that an elevation is not taught by Sano et al. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Comulada et al. teaches:

...a top surface reference chuck for holding microelectronic substrates or other electronic component substrates during laser ablation or other lithography exposure or ablation steps of the substrate manufacturing process which lithography or ablation steps use leveling devices to provide a level substrate surface for exposure or ablation... (col. 2, lines 64-67 & col. 3, lines 1-3)

This means that the substrate top surface must be held level for uniform ablation, meaning that the laser focal distance (elevation) must remain the same. Consequently, Comulada et al. meets appellant's claims.

With regard to **Claim 33**:

Appellant argues that Sano et al. fails to provide "a base plate slidably through a vertical plane a distance relative to said sliding of said at least one jaw". The examiner respectfully notes that appellant does not have basis for vertical plane but rather that the base moves upwards or downwards. Appellant states in their disclosure that this base movement is to accommodate different bat diameters. The examiner respectfully notes that the Sano et al. base plate is movable relative to the motion of the jaws (42).

Making elements adjustable was held to have been obvious. In re Stevens 101 USPQ

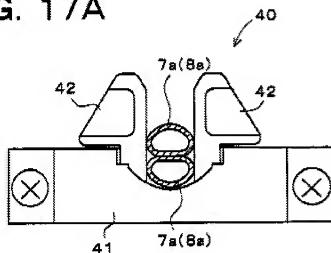
284. Sano et al. discloses accommodating different diameters:

... a user sets two tubes 7, 8 (see FIG. 2) one over the other in the tube guides 40, 100. At this time, the tubes 7, 8 are placed with their central axes being parallel one over the other. This is because the distance between the guide claws 42, 42 of the tube guide 40 (see FIG. 7) and that between the guide claws 101, 101 of the tube guide 100 (see FIG. 11) are adjusted to the outer diameter of the tube 7 (8). (col. 14, lines 40-46)

With regard to **Claim 34**:

Appellant argues that Sano et al. fails to teach a base plate, "in contact with a bat". The examiner respectfully notes that Sano et al. teaches tubular materials, which is a functional equivalent to a bat. Furthermore, intended use has been continuously held not to be germane to determining the patentability of the apparatus, In re Finsterwalder, 168 USPQ 530. the manner or method in which a machine is to be utilized is not germane to the issue of patentability of the machine itself, In re Casey, 152 USPQ 235. A recitation with respect to the manner in which a claimed apparatus from a prior art apparatus satisfying the claimed structural limitations, Ex parte Masham, 2 USPQ 2d 1647. Additionally, the tubular (bat) material of Sano et al. does come into contact with the tube guide, as follows:

FIG. 17A



The tubular material is clearly shown touching the base plate.

Appellant argues that Sano et al. fails to teach maintaining the bat at an equal distance regardless of the bat diameter. This is taught by Comulada et al. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Appellant argues that a moveable base plate is not taught by Sano et al. Appellant argues that Sano et al. does not teach a movable base plate. The examiner respectfully notes that the base plate is movable relative to the motion of the jaws (42). Furthermore, it is the position of the examiner that it would have been obvious to one of ordinary skill in the art at the time of the invention to make the base adjustable/movable

(i.e. add a sliding plate) because it would yield greater mobility to the clamping system and greater flexibility for the holding of the workpiece. Making elements adjustable was held to have been obvious. In re Stevens 101 USPQ 284.

With regard to **Claim 35**:

Sano et al. fails to teach or suggest "said base plate movable relative to said fixture plate, said camming surface and said pair of jaws. The examiner respectfully notes that the camming surface and base plate are one and the same according to appellant's disclosure. Furthermore, Sano et al. discloses a fixture plate (210), a base plate (41a) and jaws (claws 42).

With regard to **Claim 36**:

Appellant argues that Sano et al. fails to teach a "base plate being slidable relative to said base and said opposed jaws". The examiner respectfully disagrees because that the base plate is movable relative to the motion of the jaws (42). Making elements adjustable was held to have been obvious. In re Stevens 101 USPQ 284.

Appellant argues that Sano et al. also fails to teach "a base plate camming surface extending from said opposed jaws and engaging said base plate causing said jaws to move a pre-selected distance relative to a distance moved by said base plate". The examiner respectfully notes that the jaw motion depends on the presence of the baseball bat. Sano et al. teaches a base plate surface (41a) in which jaws (42 claws) move with the presence of a tubular material. The jaws are also positioned based on

springs (43). Thus Sano et al. teaches a base plate surface (41a), extending from opposed jaws (42).

Appellant argues that removal of the movable clamp (12) would render the Sano et al. device inoperable. The examiner respectfully disagrees because figures 17 a & b, above, show tubular material (7 & 8) held between the jaws (42) without the presence of clamp (12).

Dependent Claims 2-13 & 26-31:

Appellant argues that jaw movement and base plate movement is not taught. The examiner respectfully disagrees because Sano et al. teaches a base plate surface (41a) in which jaws (42 claws) move with the presence of a tubular material. The jaws are also positioned based on springs (43). The examiner respectfully notes that the base plate is movable relative to the motion of the jaws (42). Making elements adjustable was held to have been obvious. In re Stevens 101 USPQ 284.

Appellant argues that rollers are not taught. The examiner respectfully disagrees because rollers (22 & 23) are used.

Appellant argues that a camming surface with a 2-1 rise to run is not taught. The examiner respectfully notes that the leveling device (chuck) as taught by Comulada et al. is capable of this.

C. § 103 Rejection of claim 1-13 and 25-26 over Sano in view of Comulada and further in view of Baum

Appellant argues that use of Baum shows the failure of the examiner's rejection. The examiner respectfully notes: Intended use has been continuously held not to be germane to determining the patentability of the apparatus, In re Finsterwalder, 168 USPQ 530. the manner or method in which a machine is to be utilized is not germane to the issue of patentability of the machine itself, In re Casey, 152 USPQ 235. A recitation with respect to the manner in which a claimed apparatus from a prior art apparatus satisfying the claimed structural limitations, Ex parte Masham, 2 USPQ 2d 1647. Additionally, Baum shows that laser cutting/engraving of baseball bats is known.

Appellant argues that the use of the Baum bat in an engraving fixture would damage the Baum bat rendering the device inoperable for its intended use. The examiner respectfully notes that Baum is used to teach that it is known in the industry to use laser cutting/engraving/ablation on baseball bats. Furthermore, references do not have to be physically combinable. In re Etter 225 USPQ 1 (Fed. Cir. 1985 en banc); In re Nievelt 179 USPQ 224 (CCPA 1973).

Appellant argues that the Sano et al. apparatus has a movable clamp (12) which would render the laser incapable of engraving. The examiner respectfully notes that the Sano et al. tube guide (40) portion of the apparatus was focused on. Additionally, figures 7, 17a & 17b, above, show that Sano et al. does not always use the clamp (12).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/M. Alexandra Elve/

Primary Examiner, Art Unit 3742

Conferees:

/Henry C. Yuen/

SPRE Special Programs TC 3700

/TU B HOANG/

Supervisory Patent Examiner, Art Unit 3742

